



Crl.A.(MD) No.524 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.06.2024

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

Crl.A.(MD) No.524 of 2022
and
Crl.M.P.(MD) No.4506 of 2023

Senthil

... Appellant

-vs-

State through
The Inspector of Police
Thathaiyangarpettai Police Station
Trichy District
(in Crime No.115 of 2008)

... Respondent

PRAYER: Appeal filed under Section 374(2) of the Code of Criminal Procedure against the Judgment dated 10.07.2012, in S.C.No.127 of 2009, on the file of the Sessions Court, Tiruchirappalli Division, Tiruchirappalli.

For Appellant : Mr.R.Alagumani

For Respondent : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor



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J U D G M E N T

(Delivered by A.D.JAGADISH CHANDIRA, J.)

This criminal appeal is filed against the judgment and order dated 10.07.2012, in S.C.No.127 of 2009, on the file of the Sessions Court, Tiruchirappalli Division, Tiruchirappalli.

2. The Trial Court framed a charge against the appellant, as detailed below:

Charge	Penal Provisions
1	302 I.P.C.

3. By judgment and order dated 10.07.2012, the Trial Court convicted the appellant and sentenced him, as detailed below:-

Section of Law	Sentence of imprisonment	Fine amount
302 I.P.C.	To undergo imprisonment for life	Rs.1,000/- in default to undergo rigorous imprisonment for six (6) months.



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4. The prosecution case is as under:

4.1. The appellant Senthil is the sister's son of Bojan / *de facto* complainant (P.W.1). He was not having any permanent job and he was a drunkard. Hence, P.W.1 had refused to give his elder daughter in marriage to the appellant. Mariappan, father of P.W.1, had also strictly refused to give the younger daughter of P.W.1 in marriage to the appellant, thereby, the accused had developed grudge against the father of P.W.1 Mariappan. On 20.12.2008, when the father of P.W.1 Mariappan was sleeping in the temple verandah of the house of one Periyasamy, the appellant with an intention to murder him, entered into the temple verandah at 04.00 a.m., tied his head with a towel (M.O.10) and attacked on his head with a firewood stick (M.O.8) and committed murder.

4.2. On receipt of the complaint (Ex.P1) from P.W.1, the Sub Inspector of Police, Thathaiyangarpettai Police Station, had registered the first information report (Ex.P7) in Crime No. 115 of 2008, against the appellant, for the offence under Section 302 I.P.C.



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4.3. A.Arumugam, Inspector of Police, Thathaiyangarpettai Police Station (P.W.11), took up the investigation and visited the place of occurrence and prepared the observation mahazar (Ex.P2) and rough sketch (Ex.P15) and examined the witnesses and prepared the inquest report (Ex.P17) and sent the body of the deceased Mariappan for postmortem. P.W.11 had arrested the accused and on the basis of the confession of the appellant, he had recovered the firewood stick (M.O.8) and blood stained shirt (M.O.6) and blood stained lungi (M.O.7) of the appellant and sent the appellant to judicial custody.

4.4. After examining various witnesses and collecting reports from the experts, the Investigating Officer completed the investigation and filed the final report in P.R.C.No.6 of 2009, before the learned Judicial Magistrate, Thuraiyur, under Section 302 I.P.C., against the appellant.



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5. On appearance of the appellant, the provisions of Section 207 of the Code of Criminal Procedure were complied with and the case was committed to the Court of Sessions, Tiruchirappalli and it was taken on file in S.C.No.127 of 2009. The Trial Court framed a charge against the appellant, as detailed in Paragraph No.2, supra.

6. When questioned, the appellant pleaded "not guilty". To prove the case, the prosecution examined 11 witnesses and marked 21 exhibits and 12 material objects. When the appellant was questioned under Section 313 of the Code of Criminal Procedure on the incriminating circumstances appearing against him, he denied the same and did not come forward to give any plausible explanation. No witness was examined from the side of the accused nor any document marked.

7. The Trial Court, after considering the evidence on record and hearing either side, by judgment and order dated 10.07.2012, convicted and sentenced the accused, as detailed in Paragraph No3 supra. Challenging the above said conviction and sentence, the accused has filed the present appeal.



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8. Learned counsel for the appellant, while taking this Court to the evidence of the witnesses, submitted that though there are several points available on merits assailing the conviction and sentence imposed on the appellant, he is restricting his arguments only to modification of the sentence, on the ground that the case of the appellant will fall under culpable homicide not amounting to murder attracting punishment under Section 304(I) I.P.C. He would further submit that the appellant is the grandson of the deceased Mariappan and the alleged motive is that since the deceased had compelled the *de facto* complainant (P.W.1) and his wife (P.W.2) not to give their younger daughter in marriage to the appellant, he is said to have assaulted the deceased with a firewood stick (M.O.8). As per the evidence of Chelladurai (P.W.3), the place of occurrence was dark and the deceased was said to have slept in the dark area. He would further submit that the appellant had not tied the deceased's head with towel as alleged by the prosecution. Since there was bleeding from the head of the deceased after the occurrence, in order to control bleeding and save him, he tied his head with a towel. Further, the appellant is in imprisonment for the past twelve years and therefore, he seeks for modification of the sentence imposed on the appellant.



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9. Learned counsel for the appellant, in support of his contentions, placed reliance upon the decision of the Honourable Supreme Court in the case of **Thangaiya vs. State of T.N.**, reported in **(2005) 9 SCC 650**. The relevant portion of the said decision is extracted hereunder:

17. These observations of Vivian Bose, J. have become locus classicus. The test laid down by Virsa Singh's case (supra) for the applicability of clause "Thirdly" is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied: i.e. (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death, viz., that the injury found to be present was the injury that was intended to be inflicted.

18. Thus, according to the rule laid down in Virsa Singh's case, even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out this point.



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19. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons - being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

20. The above are only broad guidelines and not cast iron imperatives. In most cases, their observance will facilitate the task of the Court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each other that it may not be convenient to give a separate treatment to the matters involved in the second and third stages.

21. The position was illuminatingly highlighted by this Court in *State of Andhra Pradesh v. Rayavarapu Punneyya and Anr.*, *Abdul Waheed Khan @ Waheed and Ors. v. State of Andhra Pradesh* and *Augustine Saldanha v. State of Karnataka*.

22. Keeping the aforesaid legal principles in view, the factual position is to be examined. It cannot be said as a rule of



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universal application that whenever one blow is given Section 302 IPC is ruled out. It would depend upon the facts of each case. The weapon used, size of the weapon, place where the assault took place, background facts leading to the assault, part of the body where the blow was given are some of the factors to be considered. In the instant case admittedly one blow was given with a small stick, and the place where the assault took place was dimly lit. Inevitable conclusion is that the case is covered by Section 304 Part I IPC and not Section 302 IPC. The conviction is accordingly altered. Custodial sentence of 10 years would meet the ends of justice.

10. Learned Additional Public Prosecutor appearing for the respondent, on instructions, submitted that the appellant is the grandson of the deceased Mariappan and sister's son of the *de facto* complainant (P.W.1). P.W.1 had refused to give his elder daughter in marriage to the appellant on account of he being a drunkard and without any permanent job. While so, the younger daughter of the *de facto* complainant (P.W.1) attained puberty and the appellant had asked P.W.1 to give his younger daughter in marriage to him. However, considering the bad character of the appellant, the deceased Mariappan, father of P.W.1, had strictly refused to accept the request of the appellant, thereby, the appellant had developed grudge against the deceased



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and on 20.12.2008, when the deceased was sleeping in the Temple verandah, the appellant, with an intention to murder him, entered into the Temple at 04.00 a.m., tied his head with towel (M.O.10) and attacked on his head with a firewood stick (M.O.8) heavily and committed murder. He would further submit that the prosecution has proved that the appellant has committed the offence with an intention to commit murder and the Trial Court has rightly finding that the act of the appellant is resulted in murder convicted him for life.

11. Heard Mr.R.Alagumani, learned counsel appearing for the appellant and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor appearing for the respondent.

12. Before analysing the grounds on which the appellant sought for modification of sentence, it would be worthwhile to have a glance over the evidence of the witnesses, more particularly, P.Ws.1 to 4, who are the parents and their neighbours.

13. Bojan (P.W.1), father of the deceased, in his evidence, had deposed that his father was a retired person and his mother died four years



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prior to the occurrence. The deceased used to take meals in his house and sleep in the temple verandah of the house of Periyasamy situated near his house. The appellant asked P.W.1 to give his elder daughter Muthulakshmi in marriage to him, for which they had not accepted and the deceased had also refused. Thereafter, he asked P.W.1 to give his younger daughter Tamilselvi in marriage to him, for which also they had not accepted. He further deposed that on 20.12.2008, at 04.00 p.m., he woke up as usual and went out of his house to attend nature's call and at that time, he heard some murmuring noise from the temple house and when he went near the temple house, the appellant came out of the house with a wooden log in his hand and ran away and when he shouted, his wife Mahalakshmi (P.W.2) and neighbours Chelladurai (P.W.3) and Duraisamy (P.W.4) came to the occurrence place and they saw the deceased's head was covered with a towel and blood was oozing from the right forehead portion.

14. Mahalakshmi (P.W.2), wife of P.W.1 had deposed evidence in consonance with the evidence of her husband P.W.1.

15. Chelladurai (P.W.3), a neighbour, had deposed that P.Ws.1 and 2, the deceased and the accused are known to him. The deceased is his



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grandfather. On hearing the alarm raised by P.Ws.1 and 2, he came out of his house and Duraisamy (P.W.4) and one Shanmugam (Not Examined) also came out of their house. At that time, he saw the appellant running with a stick near his house. After sometime, Mariappan died. In his cross-examination, he had deposed that the place of occurrence was dark and the deceased was sleeping in a dark place.

16. Duraisamy (P.W.4), another neighbour, had deposed that the deceased and P.Ws.1 to 3 are his relatives. The accused is known to him. On 20.12.2008, on hearing the alarm raised by P.Ws.1 and 2, he came out of his house. There is a lane between his house and the temple house. The accused ran away through the said lane. When he went to the temple house, he saw the deceased's face tied with a towel and bleeding from his head and at that time, the deceased was alive and after 10-15 minutes, he died.

17. The appellant had been convicted and sentenced to undergo life imprisonment for the offence under Section 302 I.P.C. The only ground raised by the appellant is with regard to question of sentence stating that the act of the appellant will only amount to culpable homicide and not amount to murder and therefore, he sought for modification of sentence. According to



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the learned counsel for the appellant, the weapon used is only a firewood stick (M.O.8) and the occurrence had happened in the night hours.

18. In *Thangaiya vs. State of T.N.*, reported in **(2005) 9 SCC 650**, the Hon'ble Apex Court has held that to decide whether it is a culpable homicide or murder the facts of the particular case has to be looked into and various factors like weapon used, size of the weapon, place where the assault took place, background facts leading to assault, part of the body where the blow was given have also to be taken into consideration.

19. Now while looking into facts of present case the motive for offence as per P.W.1 and P.W.2 is that the deceased who is the grand father of the appellant had directed P.W.1 not to give his daughter in marriage to the appellant and thereby he was having grudge against him. The incident took place during the night hours. P.W.2 and P.W.3 neighbours have spoken about the appellant running away with stick after the occurrence. They have also stated that the place where the deceased was sleeping was a dark place and they have also spoken about the head of the deceased tied with towel. Now coming into the evidence of post mortem doctor, P.W.10, Dr. Venkatesh he opined that there is only a single injury which resulted in the death of the



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deceased. It is also claimed by the learned counsel for the appellant that in order to control the bleeding the appellant had tied the head with towel. Taking into consideration the totality of the circumstances, we come to the inevitable conclusion that the case of the appellant will fall under Section 304(I) I.P.C., and not under Section 302 I.P.C. Therefore, we modify the conviction imposed on the appellant to one under Section 304(I) I.P.C., from Section 302 I.P.C.

20. Now, it is reported that the appellant is in imprisonment for twelve years. In view of modification of the conviction from Section 302 I.P.C., to one under Section 304(I) I.P.C., the sentence imposed on the appellant is modified to ten years imprisonment.

21. In fine, this criminal appeal is partly allowed. While the conviction rendered by the learned Sessions Judge, Tiruchirappalli Division, Tiruchirappalli, in S.C.No.127 of 2009, by Judgment dated 10.07.2012, for the offence under Section 302 I.P.C., is modified into one of Section 304(I) I.P.C., sentence of imprisonment imposed on the appellant is modified to ten years and the sentence with regard to fine amount rendered by the Trial Court is set



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Since it is reported that the appellant is in jail for more than ten years, he is directed to be set at liberty forthwith, unless his detention is necessary in connection with any other case. Fine amount, if any already paid, shall be refunded to the appellant. Consequently, connected miscellaneous petition is closed.

[A.D.J.C., J.] [K.R.S., J.]

06.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

- 1.The Sessions Judge,
Sessions Court,
Tiruchirappalli Division,
Tiruchirappalli.
- 2.The Inspector of Police,
Thathaiyangarpettai Police Station,
Trichy District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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A.D.JAGADISH CHANDIRA, J.
AND
K.RAJASEKAR, J.

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and
Crl.M.P.(MD) No.4506 of 2023

06.06.2024